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**Subject:** OCSPP News for December 22, 2021

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## **EPA Reviewing Dicamba Use on Soybeans and Cotton**

Pro Farmer Editors, Ag Web

<https://www.agweb.com/markets/pro-farmer-analysis/epa-reviewing-dicamba-use-soybeans-and-cotton>

EPA is currently evaluating the use of dicamba and whether it can be sprayed on GMO cotton and soybean plants with resistance to the chemical. EPA said it has received around 3,500 reports in 2021 that more than 1 million acres of soybeans that were not dicamba-tolerant had been damaged from chemical drift of the herbicide. EPA noted the level of impacts and areas where the events took place are similar to last year even though there were tighter use restrictions on dicamba for the 2021 growing season.

“EPA is reviewing whether over-the-top dicamba can be used in a manner that does not pose unreasonable risks to non-target crops and other plants, or to listed species and their designated critical habitats,” the agency said. “EPA is also evaluating all of its options for addressing future dicamba-related incidents.” EPA also said it believes there has been “widespread underreporting of dicamba-related incidents” in 2021.

Relative to 2022, EPA said that if a state wants to further restrict or narrow over-the-top uses of dicamba, the agency will “work with them to support their goals.” And EPA also said based on the incident reports from the 2021 growing season, it is “unlikely” to approve any requests for additional uses of federally registered over-the-top dicamba products to meet special local needs.

## **Dicamba drift continued unabated in 2021**

Britt Erickson, Chemical & Engineering News

<https://cen.acs.org/environment/pesticides/Dicamba-drift-continued-unabated-2021/99/web/2021/12>

The herbicide dicamba continued to wreak havoc on nontarget agricultural crops during the 2021 growing season, despite measures to minimize drift that the US Environmental Protection Agency put in place in 2020, according to a summary of incident reports released Dec. 21.

In light of the new data, the EPA is reevaluating whether dicamba can be sprayed on soybeans and cotton that have been genetically engineered to tolerate it, without posing unreasonable risks to nontarget plants. But even if the agency decides to take action to address the alleged dicamba-drift incidents, it acknowledges that it is unlikely to implement regulations before the 2022 growing season.

The EPA has been working with state agencies to investigate complaints of dicamba damage to nontolerant plants ever since it approved the use of the herbicide on genetically modified soybeans and cotton in 2016.

A coalition of environmental groups sued the EPA in 2017 over the dicamba approvals, claiming the agency violated environmental laws. In June 2020, a federal appeals court ruled in favor of the plaintiffs, ordering the EPA to cancel all dicamba registrations. But in October 2020, under former President Donald J. Trump, the agency issued new registrations for two dicamba products and extended the registration for another one. The EPA included new controls to prevent drift in all three cases.

Those controls, however, did not make much of a difference in the number and severity of dicamba related incidents, the EPA says. For the 2021 growing season, the EPA received about 3,500 incident reports related to dicamba damage. Affected plants include grapes, peanuts, rice, sugar beets, and sweet potatoes, as well as nontolerant soybeans and nonagricultural plants and trees.

Measures the US Environmental Protection Agency put in place in 2020 did little to stop the herbicide dicamba from damaging nontolerant soybeans during the 2021 growing season.

Farm groups representing soybean and cotton growers question the incident-report data. They claim that it is unclear whether some complaints were submitted to multiple agencies and were therefore double counted. They also question whether the complaints were investigated to confirm the damages and assess the causes.

"The agricultural community expects regulators to be clear with the data on which they are making decisions," Alan Meadows, a soybean grower in Tennessee and member of the American Soybean Association's board of directors, says in a statement. "It is concerning the information released provides an incomplete picture," he says.

Environmental groups argue that the EPA has sufficient data to ban the herbicide. "Dicamba's five-year trail of unprecedented devastation is more than enough evidence to ban all over-the-top uses now," Bill Freese, science director at the Center for Food Safety, one of the plaintiffs in the 2017 lawsuit, says in a statement. "More review and study must not be used as pretext for still further procrastination," he says.

### **Drifting herbicide still killing crops despite EPA restrictions**

Marc Heller, E&E News

<https://subscriber.politicopro.com/article/eenews/2021/12/22/drifting-herbicide-still-killing-crops-despite-epa-restrictions-284643>

EPA's latest efforts to keep the weedkiller dicamba from killing crops it's not supposed to touch aren't helping much, the agency said.

In a report, EPA said it recorded nearly 3,500 incidents of dicamba drifting away from farms and damaging neighboring fields in 2021, the first year for new restrictions that were supposed to cut down on the problem.

That's about the same number of incidents as in the prior year, the environmental agency said, adding that the data will help the agency decide whether further limitations will be necessary, such as a ban on certain uses.

"Given the new information from the 2021 growing season, EPA is reviewing whether over-the-top dicamba can be used in a manner that does not pose unreasonable risks to non-target crops and other plants, or to listed species and their designated critical habitats. EPA is also evaluating all of its options for addressing future dicamba-related incidents," the agency said, adding that any updated regulations probably can't be fully implemented until after the 2022 growing season.

The agency said it received reports of more than 290 incidents in counties where additional restrictions had been put in place. More than a million acres of soybeans was affected as of Nov. 17, EPA said.

"Dicamba incidents continue at high numbers relative to recent past," EPA said. "They occur over a large geographic range and damage occurs on a wide range of plant species. There is no change from previous years in the number, severity, or geographic extent of incidents."

At issue is the use of dicamba on crops that have already emerged from the ground, as opposed to spraying fields to kill weeds before soybeans, cotton or other crops have sprouted. The so-called over-the-top use on crops engineered to withstand it is at the root of the spray drift controversy, as other uses are more established.

In recent years, researchers have said the pesticide may have links to liver cancer, although EPA has said its own research doesn't support such a conclusion.

Over-the-top use of dicamba has been on a regulatory seesaw, in part due to lawsuits connected to the damage. In June 2020, the 9th U.S. Circuit Court of Appeals threw out EPA's most recent over-the-top dicamba registration, and the agency followed a few days later by officially canceling the registration but allowing farmers to use what they'd already bought.

EPA's Office of Inspector General has said the agency broke its own scientific principles in approving dicamba in 2018 (Greenwire, May 24).

Later in 2020, EPA approved different dicamba products, including a Bayer Crop Science brand called XtendiMax, for over-the-top use, with additional limits aimed at reducing the threat of spray drift (E&E News PM, Oct. 27, 2020).

Those limits included a requirement to mix the chemical with ingredients that would control its volatility, prohibiting application on soybeans after June 30 and cotton after July 30, and establishing downwind buffers of as much as 310 feet depending on circumstances.

"After reviewing substantial amounts of new information, conducting scientific assessments based on the best available science and carefully considering input from stakeholders, we have reached a resolution that is good for our farmers and our environment," then-EPA Administrator Andrew Wheeler said at the time.

Dicamba's manufacturer, Bayer, said it's reviewing EPA's information.

The company said in a statement: "We appreciate all the efforts made by growers this year to complete the pre-season training and implement the new EPA label requirements, which we believe helped the vast majority of XtendiMax herbicide users succeed with weed control and on-target applications this season. XtendiMax herbicide is a vitally important tool for growers, and we look forward to helping growers have a successful 2022 with the technology."

Environmental groups that have fought to ban dicamba said EPA's findings make the case.

"The ongoing devastation to...

### **Further EPA dicamba restrictions could be coming**

Jacqui Fatka, Farm Progress

<https://www.farmprogress.com/farm-policy/further-epa-dicamba-restrictions-could-be-coming>

In October 2020, the Environmental Protection Agency implemented new restrictions on dicamba use to help reduce potential drift and incidents of the herbicide used more extensively to manage herbicide-resistant weed populations. New data released by the EPA Dec. 21 reveals that dicamba-related incident reports from the 2021 show little change in number, severity or geographic extent of dicamba-related incidents when compared to the

reports the agency received before the 2020 control measures were required.

Will EPA make changes to dicamba's registration and application requirements? This report gathers the intel on what that could mean for farmers and the industry.

Given the new information from the 2021 growing season, EPA says it is reviewing whether over-the-top dicamba can be used in a manner that does not pose unreasonable risks to non-target crops and other plants, or to listed species and their designated critical habitats. EPA is also evaluating all of its options for addressing future dicamba-related incidents. The agency stated it will not cancel the current registration or make any other changes to the restriction at this time, instead merely evaluating other options for addressing future dicamba-related incidents.

In 2020, EPA compared the incidents reported to EPA against incidents reported in USDA's 2018 Soybean Agricultural Resource Management Surveys and estimated that approximately one incident is reported to EPA for every 25 incidents reported to USDA.

Additionally, a survey of midwestern specialty crop growers found that 45% of those surveyed had crops impacted by some level of herbicide drift in 2020. However, the survey indicated that only 6% of growers reported incidents when herbicide damage was detected in 2019 and 2020. Respondents did not distinguish damage by herbicide, but reported dicamba, 2,4-D or glyphosate as the most likely herbicide causing damage.

Nationally, about three-quarters of the cotton acreage and about two-thirds of the soybean acreage are planted with dicamba-tolerant (DT) seed. Based on market research data and aggregated sales data, about half of DT cotton and DT soybean were treated one or more times with an over-the-top (OTT) dicamba product in 2020 (2021 data are not yet available).

Based on pesticide usage survey data from 2020, misuse of dicamba products not registered for over-the-top use may have occurred on a small percent of DT soybean and cotton acres, the EPA report notes.

In 2021, EPA continued to receive reports of off-target movement of dicamba. EPA received nearly 3,500 reports alleging effects from off-target movement of dicamba onto various nontarget vegetation, including cotton and soybean varieties that are not dicamba-tolerant, ornamental plants, other crops (sugarbeet, rice, sweet potato, peanut, grapes, cucurbits, vegetables, fruit trees caneberries) and natural areas. Incidents in food crops reportedly occurred in Arkansas, Illinois, Kansas, Missouri, North Dakota, Nebraska, Ohio, South Dakota, Tennessee and Texas. Incidents were also reported for non-crop areas in Arkansas such as state parks and wildlife refuges.

Dicamba incidents underreported?

EPA expects that OTT dicamba related incidents continue to be "under-observed and underreported," according to its latest report. The number of reported incidents vary depending on the state. EPA received few incident reports from states such as Georgia, Louisiana and Mississippi, where OTT dicamba is widely used.

In other states, such as Arkansas, Illinois and Minnesota, reported incidents are numerous and widespread. "Reported effects vary in severity and include landscape level damage and reductions in crop quality and yield," EPA says. Additionally, the reports indicate some growers' crops (or noncroplands) have experienced multiple years of exposure to dicamba and subsequent damage.

According to some stakeholders, off-target movement can occur even when there is complete compliance with label...

## **EPA INCIDENT REPORT HIGHLIGHTS DICAMBA ISSUES FROM 2021**

Successful Farming Staff, Successful Farming

<https://www.agriculture.com/news/business/epa-incident-report-highlights-dicamba-issues-from-2021>

The Environmental Protection Agency (EPA) announced December 21 it is “...debating whether over-the-top use of dicamba herbicide can be used in a manner that does not pose unreasonable risks to non-target crops and other plants, or to listed species and their designated critical habitats.”

This was one finding in the agency’s 73-page 2021 Incident Report, in which the EPA said it received roughly 3,500 dicamba-related incident reports from the 2021 growing season, and that:

More than 1 million acres of non-dicamba-tolerant soybean crops were allegedly damaged by off-target movement of dicamba.

A range of non-target agricultural crops were allegedly affected by dicamba, such as sugar beets, rice, sweet potatoes, peanuts, and grapes.

Dicamba allegedly damaged non-agricultural plants and trees, such as those that grow near homes and in wild areas, including a 160,000-acre wildlife refuge.

More than 280 incident reports came from counties where additional restrictions are required to protect endangered species when dicamba is applied to dicamba-tolerant soybean and cotton crops.

In a summary news release, EPA said that based on prior research and numerous stakeholder meetings, “...EPA has reason to believe the number of incidents reported significantly understates the actual number of incidents related to dicamba use.” For example, in a 2020 memo, EPA estimated that one in 25 dicamba incidents was reported to EPA. No evidence available to EPA suggests that underreporting has changed.

**READ MORE: EPA reviews Bayer dicamba herbicide blamed for crop damage**

“The regulatory tools that the Agency could use to address the extent and severity of the alleged dicamba-related incidents are unlikely to be fully implemented by the 2022 growing season due to the statutory processes the Agency is required to follow,” the report says.

Several farmer grower groups responded to the report.

The American Soybean Association, National Cotton Council, and American Farm Bureau Federation are raising questions about data released Dec. 21 by EPA regarding reported dicamba off-target complaints during the 2021 growing season. Growers are concerned with the potential of significant gaps in the data provided by the agency.

For example:

It is not clear whether complaints were submitted to multiple sources/regulators and were therefore double-counted.

It is unclear if EPA, state regulators, or others investigated complaints to verify injury or assess potential causes. Alan Meadows, a soybean grower from Halls, Tennessee, and ASA director said, “The agricultural community expects regulators to be clear with the data on which they are making decisions. It is concerning the information released provides an incomplete picture. Data that is not present in this EPA release may tell as much or more about the story than what the agency has included.”

NCC Chairman Kent Fountain, a Georgia cotton producer, said, “EPA’s report doesn’t align with what the U.S. cotton industry has seen and heard in the field. The data needs to be analyzed carefully to ensure accuracy because dicamba is too important to our industry for decisions to be made on incomplete or faulty data.”

AFBF President Zippy Duvall said, “The decisions EPA makes regarding herbicides have wide-ranging

consequences for America's farmers and ranchers, so they should be made after careful review and consideration of peer-reviewed science. The stakes are simply too high to make major label changes without due diligence from EPA to learn all the facts surrounding reported incidents. America's farmers deserve a fair process as they work to use climate-smart practices to produce food, fuel and fiber for our nation."

The EPA said in the report that it is committed to helping states address issues related to incidents in their jurisdictions. If a state wishes to further restrict or narrow the over-the-top uses of dicamba, the Agency will work with them to support their goals. Additionally, due to the extent...

### **The true costs of toxic materials**

Rebecca Stamm, GreenBiz

<https://www.greenbiz.com/article/true-costs-toxic-materials>

When you shop for a flooring product, what do you consider? Perhaps you think about the look and feel of the product and its durability. You likely also consider the price. The cost of using a material is influenced by the cost to purchase the product itself, the installation cost, maintenance costs, as well as how long the product will last (when you will have to pay to replace it). These are all internalized costs, paid by the building owner.

These costs alone, however, do not consider the full impacts of materials along their life cycles. More building industry professionals are paying attention to the content of building products and working to avoid hazardous chemicals in an effort to help protect building occupants and installers from health impacts following chemical exposures. To understand the true, full cost of a product, we must look beyond just the monetary cost of purchasing and maintaining a product.

Potential chemical impacts during the use phase are important considerations to include in material decisions, and these impacts must be considered in weighing the true cost of a product. As the safer materials movement matures, we must evolve to include a more comprehensive and just consideration of chemical impacts and the true cost of materials. This means considering impacts throughout the full life cycle of a product including extraction/refining, chemical manufacturing, product manufacturing and end of life. The bottom line is that some products can be sold cheaply because someone else is carrying the burden of the true cost.

#### **Hidden costs**

Many costs associated with products are more or less hidden when choosing a building material. Just a few of these hidden costs are outlined below:

**Toxic chemical impacts on human health:** This includes direct medical expenses due to diseases caused or exacerbated by chemical exposures, as well as indirect health-related costs such as loss of productivity in work or school and decreased economic productivity in terms of loss of years of life and loss of IQ points. It also includes the immeasurable costs to quality of life and loss of loved ones.

**Environmental contamination costs:** Contamination of the environment with toxic chemicals contributes to the human health impacts noted above. In addition, the costs of environmental contamination can include reduced property values in and around contaminated areas, loss of income and food production from the contamination of farms, and the cost of clean-up activities (such as utilities' clean-up of water contamination). Less quantifiable costs include damage to wildlife and ecosystems.

**Climate change impacts:** Production of chemicals and products is often energy-intensive and based on fossil fuels. Most products contribute to climate change to some extent. Some contribute more than others because of energy use or the release of chemicals with high global warming potential. These greenhouse gas emissions exacerbate climate change, leading to increasingly powerful storms and fires, with increasingly high and

recurring costs for recovery. Climate change also magnifies the impacts of toxic chemicals, increasing the human and environmental health costs.

Environmental injustice: Disproportionately, the health impacts and associated costs throughout the life cycle of products (during manufacturing and at end of life) fall on communities of color and low-income communities. The numerical cost of these impacts may not be quantifiable, but the costs to our society are no less clear as a result.

Quantifying the estimated costs of these impacts is challenging. In most cases, there is just not enough data to estimate the full costs of hazardous chemical impacts. In the sections below, we consider some of the estimated direct and indirect costs of some toxic chemicals to society, summarizing each according to the aforementioned categories.

Toxic chemical impacts on human health

The U.S. Occupational Safety & Health Administration (OSHA)...

### **NTP Lists Antimony Trioxide In Carcinogens Report, Boosting TSCA Priority**

David LaRoss, Inside TSCA

<https://insideepa.com/tsc-news/ntp-lists-antimony-trioxide-carcinogens-report-boosting-tsca-priority>

The National Toxicology Program (NTP) has added antimony trioxide, a flame retardant ingredient already on EPA's TSCA work plan, to its influential Report on Carcinogens (RoC) -- potentially elevating it as a candidate for risk evaluation after previous reports helped drive the agency's selections of other "high-priority" chemicals under the law.

NTP on Dec. 21 announced the release of its 15th RoC, which adds eight substances to its list of those "known or reasonably anticipated to cause cancer in humans" -- including antimony trioxide in the "reasonably anticipated" category.

EPA had already listed all forms and compounds of antimony on its 2014 Toxic Substances Control Act (TSCA) work plan of candidates for future action, in part because they were considered possible human carcinogens.

Various forms of the chemical can also carry developmental or reproductive effects, with dangers from both acute and chronic airborne exposures, it found at the time.

The newly published RoC profile notes that it is also considered a hazardous air pollutant under the Clean Air Act, a toxic constituent in water, a hazardous waste under the Resource Conservation and Recovery Act and is subject to Toxics Release Inventory reporting mandates.

And while the RoC only addresses antimony trioxide, with no mention of other variations, it finds "sufficient evidence" from both animal testing and mechanistic studies to find that it is reasonably anticipated to cause lung tumors in humans when inhaled.

"Antimony trioxide administered by inhalation caused lung tumors in rats and mice of both sexes and tumors at several other tissue sites in female rats and in mice of both sexes. No cancer studies in experimental animals exposed to antimony trioxide by other routes were identified," the RoC profile reads.

NTP also makes several findings on likely exposure routes for the chemical, which it notes "is a component of flame retardants used in plastics, textiles, and other consumer products."

Its listing continues, “[t]he highest exposure to antimony trioxide occurs among workers who produce the chemical or use it to make flame retardants. Other people may be exposed to low levels of antimony trioxide from breathing contaminated outdoor air, especially those living near antimony facilities. Exposure can also occur through fine dust from the wear and tear of flame retardant-treated products, such as carpets and upholstery.”

That data could help guide future regulation of antimony trioxide under TSCA. While there is no formal link between the RoC and EPA’s existing-chemicals program, prior NTP listings have been factors in the agency’s decisions on which candidates to designate as high-priority for evaluation and eventual rulemaking.

For instance, the 2011 RoC upgraded formaldehyde’s long-standing designation as a “reasonably anticipated” carcinogen to being a “known” cancer-causing agent with links to both nasal tumors and leukemia, and whether EPA will agree with that finding has emerged as a focal point in its TSCA evaluation of the chemical as well as its long-pending Integrated Risk Information System assessment -- a draft of which is expected as soon as late December.

The 2016 RoC similarly upgraded the solvent trichloroethylene (TCE) from “reasonably anticipated” to “likely,” just months before EPA announced it would evaluate that chemical as one of its first 10 high-priority substances under the reformed TSCA -- though the eventual final evaluation was based on risks of immune-system harms rather than cancer.

#### Other Listings

In addition to antimony trioxide, the new RoC adds six drinking water disinfection byproducts (DBPs) collectively known as haloacetic acids to the “reasonably anticipated” list. However, it is unclear whether that move will affect EPA’s approach to the chemicals since it already announced in 2017 that it was targeting them for stronger regulations under the Safe Drinking Water Act due to their links to cancer.

EPA...

#### **EPA OFFICIAL PREVENTED STAFF FROM WARNING PUBLIC ABOUT WIDELY USED CARCINOGEN**

Sharon Lerner, The Intercept

<https://theintercept.com/2021/12/22/epa-whistleblowers-carcinogen-paint-solvent/>

IN DECEMBER 2019, a toxicologist at the Environmental Protection Agency was tasked with assessing a product that was about to be introduced to the market. As is often the case, the single product — a paint — contained several individual chemicals. One of them, a solvent known as parachlorobenzotrifluoride, or PCBTF, made up half of the product’s weight. There was ample evidence that PCBTF causes cancer. But after the toxicologist included the information in his report, a senior leader in the division removed it, according to documents EPA whistleblowers shared with The Intercept and submitted to the EPA inspector general. The deletion left the public with no way to know this widely used chemical was a carcinogen.

While the assessor worked in the EPA’s New Chemicals division, and the particular paint he was assessing was new, PCBTF is not. The most widely used solvent in the coatings and adhesives industry, PCBTF has been added to products since the 1960s and can be found in ink, caulk, cleaners, stain removal products, polyurethane finishes, primer, graffiti remover, paint for cars, steel and concrete, and garage floors. The chemical has also been used to make other chemicals, including dyes, pharmaceuticals, and pesticides. Each year, between 10 and

50 million pounds of PCBTF are used in the U.S., according to the most recent data from the EPA, and countless workers are exposed at both paint and car manufacturing plants.

PCBTF is on a list of “green” compounds preferred by the EPA because, when used instead of some other solvents, it can help reduce ozone levels. However, while that designation boosts the use of PCBTF, it doesn’t take into account its health effects. Nor has the EPA assessed PCBTF under the updated Toxic Substances Control Act, as is the case for the vast majority of chemicals now in use. In fact, because it was introduced before the Toxic Substances Control Act was passed in 1976, the safety of the compound had not been reviewed at all. Rather, PCBTF was grandfathered in, along with more than 60,000 chemicals that were on the market before the law took effect.

While the EPA had not assessed the safety of PCBTF, other scientists had done so. From a quick search, the toxicologist was able to find concerning evidence of its harms dating back decades. In a 1983 study of 4,000 workers exposed to PCBTF at an Occidental Chemical Corporation plant in Niagara, New York, researchers documented elevated rates of stomach and respiratory cancers. A 2009 report from the National Toxicology Program cited those findings as well as studies showing that mice exposed to the chemical developed liver cancer. The report also noted experiments that had shown the chemical to cause tremors and hyperactivity in rats, as well as lung problems in pups who had been exposed in the womb.

Six months before the case of the new paint landed on the toxicologist’s desk, California had listed PCBTF under Proposition 65, a law that requires public warnings for carcinogenic chemicals. The state’s Office of Environmental Health Hazard Assessment had made the decision based on evidence that the chemical had caused liver tumors in both male and female mice. And just one month before he began considering the new paint, the International Agency for Cancer Research had deemed PCBTF a likely human carcinogen.

In an emailed response to questions for this story, EPA spokesperson Lindsay Hamilton wrote, “While one can accurately state that many of the chemicals that were grandfathered into the 1976 law may pose risks and remain unrestricted under TSCA [Toxic Substances Control Act], the PMN [premanufacture notification] substance subject to this inquiry was not handled inappropriately or inconsistently with TSCA.”

#### Just a Solvent

The toxicologist found himself in a bind. He felt he should incorporate the information about PCBTF into his assessment. After all, the law requires the agency to determine whether each new chemical substance presents an...

#### **Scientists urge EPA to grant PFAS testing petition**

N/A, Inside TSCA

<https://insideepa.com/tsca-takes/scientists-urge-epa-grant-pfas-testing-petition>

Several dozen scientists are pushing EPA to grant environmentalists’ TSCA petition seeking toxicity tests on 54 per- and polyfluoroalkyl substances (PFAS) found in North Carolina waters, doubling down on supporters’ campaign in support of the petition as the agency nears a Dec. 28 judicial deadline to respond.

Signatories to the Dec. 20 letter include Linda Birnbaum, former director of the National Institute of Environmental Health Sciences and National Toxicology Program, East Carolina University professor Jamie DeWitt, and Alan Ducatman, a member of the National Academies of Sciences’ committee on PFAS testing and health outcomes.

“Considering recent developments, we are again sharing our scientific perspective on how EPA can most effectively address the critical public health challenges presented by these chemicals,” they write, noting that in March, “several of us” had written to EPA Administrator Michael Regan “as active scientists and risk assessors,” to emphasize their concerns about the “serious risks” of PFAS.

The scientists say that although they support the agency’s October “roadmap” for PFAS regulation, that document and its Toxic Substances Control Act (TSCA) testing strategy do not “adequately address the critical need for additional testing to understand the impacts of long-term PFAS exposure on the health of communities because it will not test chemicals that have known exposures.”

And they argue that granting the North Carolina petition would aid those efforts by targeting new tests at PFAS that have been tied to community-level drinking water contamination.

“Community members and their doctors deserve to understand the health effects of this long-term exposure but there is currently little health or environmental effects information about most of the 54 PFAS. The strategically directed in vivo toxicity testing and human studies proposed in the petition will help provide the answers that communities need and will advance EPA’s testing strategy by providing important human and in vivo data to validate the agency’s predictions,” the letter says.

Specifically, the petition seeks TSCA test orders for 54 PFAS that have been detected in North Carolina’s Cape Fear River watershed near a Chemours plant -- with Chemours bearing the costs of conducting the tests.

The Trump EPA rejected the petition shortly before leaving office, with now-former Administrator Andrew Wheeler saying the groups had failed to show a need for the data the tests would generate. But they challenged that move in court, leading to a settlement with the Biden administrator that sets a Dec. 28 deadline for the agency to craft a new response.

Industry attorneys say the EPA is likely to grant the petition in part, but have raised doubts that officials will back its most aggressive elements, including a call for new epidemiological studies.

### **EPA Failing to Study Pesticide’s Risks to Wildlife, Court Told**

Maya Earls, Bloomberg Law

<https://bna.news/bna.com/environment-and-energy/epa-failing-to-study-pesticides-risks-to-wildlife-court-told>

The EPA must either act on a 2017 D.C. Circuit order to review a pesticide’s effects on endangered species or see its registration of the pesticide tossed, environmental groups told the court Tuesday.

The U.S. Court of Appeals for the D.C. Circuit held in June 2017 that the agency’s registration of the insecticide cyantraniliprole violated the Endangered Species Act. Cyantraniliprole, or CTP, is highly toxic to certain species, the agency acknowledged, and it stays in the environment for years.

The court said the 2014 registration could stay in place, but the Environmental Protection Agency needed to make an effects finding or consult with other agencies.

The EPA continues to violate the ESA and ignore the court’s order, the Center for Biological Diversity and Center for Food Safety argue in their petition for writ of mandamus. The agency repeatedly acknowledged it hasn’t started to make an ESA effects finding, and it’s not guaranteed to do so, the groups told the court.

The EPA announced in early December that it will soon release an “ESA pesticides workplan.” But even if cyantraniliprole is included in the workplan, the agency still needs to comply with a court-ordered deadline to act, the petition says.

The EPA’s delay is “sufficiently egregious,” the petition says. This weighs in favor of ordering the agency to act within six months or its registration will be tossed, according to the filing.

“EPA’s unconscionable delay in addressing cyantraniliprole’s harms — in the face of a direct court order — is as irresponsible as it is unlawful,” said George Kimbrell, legal director at the Center for Food Safety, in a statement Tuesday.

The EPA hasn’t immediately responded to a request for comment.

The Center for Biological Diversity represents the groups.

The case is *In re Ctr. for Biological Diversity & Ctr. for Food Safety*, D.C. Cir., Not yet docketed, 12/21/21.

### **Lawsuit says EPA failed to study insecticide’s impact on threatened species**

Sebastien Malo, Reuters

<https://www.reuters.com/legal/litigation/lawsuit-says-epa-failed-study-insecticides-impact-threatened-species-2021-12-21/>

Environmentalists and food safety advocates on Tuesday urged a Washington, D.C., federal appeals court to compel the Environmental Protection Agency to obey an earlier order that it study the effects of a pesticide on imperiled species, or else restrict the chemical's use.

The Center for Food Safety and the Center for Biological Diversity allege that the EPA has failed to comply with a 2017 ruling by the U.S. Circuit Court of Appeals for the D.C. Circuit ordering the agency to determine how the insecticide cyantraniliprole, which the agency approved in 2014, affects protected species.

Cyantraniliprole, or CTP, is used to combat certain pests including those that damage citrus crops.

It is registered under brand names including Benevia and Ference produced by companies FMC Corp and Syngenta Crop Protection, according to the EPA's website. An FMC spokesperson declined to comment. Syngenta did not immediately respond to a request for comment. Neither did the EPA.

The plaintiffs say the agency has previously found CTP can be toxic to some invertebrates and fish.

They prevailed in a lawsuit challenging CTP's registration in June 2017. In that case, the appellate court ruled that the EPA had violated the Endangered Species Act by registering the insecticide before determining its effects on protected species. It ordered the agency to do so while keeping the pesticide's registration in effect.

Tuesday's complaint says the EPA has failed to comply, "effectively nullifying" the order.

The case is *In Re Center for Biological Diversity and Center for Food Safety*, U.S. Circuit Court of Appeals for the D.C. Circuit, No. N/A.

## **OCSPP Accepting Comment on Candidates for ad hoc Reviewers for Draft TSCA Screening Level Approach for Assessing Ambient Air and Water Exposures to Fenceline Communities**

Carla Hutton and Lynn Bergeson, Bergeson & Campbell Blogs

<http://www.tscablog.com/entry/ocspp-accepting-comment-on-candidates-for-ad-hoc-reviewers-for-draft-tsca-s>

The U.S. Environmental Protection Agency (EPA) Office of Chemical Safety and Pollution Prevention (OCSPP) is accepting public comments on candidates under consideration for selection as ad hoc reviewers assisting the Science Advisory Committee on Chemicals (SACC) with their review of the draft EPA Toxic Substances Control Act (TSCA) Screening Level Approach for Assessing Ambient Air and Water Exposures to Fenceline Communities. EPA will use the comments to assist it in selecting approximately six to eight ad hoc reviewers to assist the SACC with its review. Biographies of the candidates are available online. Comments are due January 5, 2022. Comments can be submitted through Docket ID EPA-HQ-OPPT-2021-0415. Information considered to be confidential business information (CBI) or other information whose disclosure is restricted by statute should not be submitted electronically. EPA notes that it will not post copyrighted material without explicit permission of the copyright holder.

EPA notes that it published ten final risk evaluations between 2020 and 2021 under TSCA as amended by the Frank R. Lautenberg Chemical Safety for the 21st Century Act. During the course of preparing many of these final risk evaluations, the previous Administration made a policy decision that EPA not assess air and water exposure pathways that fall under the jurisdiction of other EPA-administered laws. This policy decision was reversed in June 2021. EPA states that it is presenting Version 1.0 of a screening level methodology for assessing potential air and water pathway chemical exposures to fenceline communities. Along with presenting this methodology, EPA will also present results of applying the screening methodology (case studies) to 1-bromopropane (air pathway), N-methylpyrrolidone (water pathway), and methylene chloride (air and water pathway). The review will take place during a public meeting anticipated for March 15-17, 2022. Registration instructions will be announced on the SACC website in early February 2022.

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